

# HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Amendments of Human Fertilisation and Embryology Act 1990**

#### ***Section 13: Consent to use or storage of gametes, embryos and human admixed embryos etc.***

#### **Creation, use and storage of human admixed embryos**

96. New paragraphs 12 to 14 are inserted into Schedule 3 to the 1990 Act by paragraph 13 of Schedule 3 to the Act and introduce consent requirements for the creation, use and storage of human admixed embryos (as defined by new section 4A (5) of the 1990 Act, inserted by section 4 of the Act). Human admixed embryos can be created using embryos, human cells, gametes and other human admixed embryos.
97. **Paragraph 12** makes provision equivalent to paragraph 6 of Schedule 3 to the 1990 Act (as amended by the Act) and requires an effective consent before a person's gametes or human cells can be used to create a human admixed embryo *in vitro* for the purpose of a research project.
98. Consent is also required from each "relevant person" in relation to a human admixed embryo for its use in a research project (see paragraph 12(3)). In addition consent from each "relevant person" must be in place before a human admixed embryo is received by any person.
99. New paragraph 13 of Schedule 3 to the 1990 Act achieves equivalent provision to paragraph 8 of Schedule 3 of the 1990 Act (as amended) and requires consent from each "relevant person" to storage of a human admixed embryo.
100. New paragraph 14 defines "relevant person", for the purposes of new paragraphs 12 and 13, to mean any of the following:
  - each person whose gametes or human cells were used to bring about the creation of the human admixed embryo (human admixed embryo A);
  - each person whose gametes or human cells were used to create an embryo *in vitro*, which was then used to create human admixed embryo A; and
  - each person whose gametes or human cells were used to create a human admixed embryo *in vitro*, which was then used to create human admixed embryo A.
101. As for the creation of embryos, new paragraph 22 of Schedule 3 to the 1990 Act, as inserted by paragraph 15 of Schedule 3 to the Act, provides that references to an embryo or human admixed embryo used to create a human admixed embryo include all predecessor embryos or human admixed embryos. This creates a chain of consent, so that a person must consent to their gametes or human cells being used to create a

*These notes refer to the Human Fertilisation and Embryology Act  
2008 (c.22) which received Royal Assent on 13 November 2008*

human admixed embryo and their consent is then required to the subsequent use of that human admixed embryo to create other embryos or human admixed embryos.

102. Paragraph 2 of Schedule 3 to the 1990 Act is amended to make equivalent provision to embryos used to create human admixed embryos. These amendments ensure that the consent to use of any human admixed embryo must relate to a research project and enables conditions to be attached to such use. In addition the consent must specify a maximum storage period and state what will happen to the human admixed embryo if the person who has consented dies or loses capacity. Conditions can also be attached to storage of the human admixed embryo.
103. Provision is made under the new paragraph 2(4) of Schedule 3 to the 1990 Act to allow a person to consent to the use or storage of a particular human admixed embryo or to the use and storage of any human admixed embryo created using a person's cells or gametes (or using an embryo or human admixed embryo created using their cells or gametes). Consent can be withdrawn or varied in relation to a specific human admixed embryo or generally.
104. Paragraph 4 of Schedule 3 to the 1990 Act is also amended to enable consent to be withdrawn or varied by notice to the person keeping the human admixed embryo. This ability to withdraw or vary consent in relation to a human admixed embryo is subject to the same limitation as for embryos set out at paragraph 89 above. This means once the initial human admixed embryo has been used for research purposes consent cannot be withdrawn or varied in relation to any further embryos or human admixed embryo created from it.